into our systems and into additional programming. As detailed later, we have often invested in socially responsible programming, such as the Discovery Channel and Black Entertainment Television, when no one else would. We also have invested millions in education technology--$300,000 alone in the 10 percent of Ohio's schools that we serve.

A related principle has been a relatively pure form of entrepreneurial management. We have attempted to remain lean and flexible. Although many of our employees have done well at TCI, including me, that has come through appreciation of our share values, not because of unreasonable high salaries or bonuses. We have an ESOP, in which many of our employees participate.

The changes that our full service networks will bring to our nation will enhance virtually all the public policy objectives traditionally within the interest of this Subcommittee. In some cases, the companies will be larger, but we will see a dramatic increase in the number of large companies competing with each other. We already see evidence of this within 10 miles of where we sit today. Southwestern Bell and Bell Canada have purchased cable systems in Montgomery County and Arlington that will compete directly against Bell Atlantic/TCI. Ultimately, our interest in the cable system here in D.C. will be divested to a Bell Atlantic competitor, should our merger be approved.

Even more importantly, development of full service networks will ignite an explosion of smaller, entrepreneurial concerns which will develop competing video, data and telephone applications for the new networks. It will be in the best business interest of competing network providers to nurture these companies by allowing open and easy access to the ultimate customer.

The impact of all these developments on the consumer will be most profound.

First, we foresee a dramatic increase in the choices available to the viewing public. Consumers will have many more entertainment, news and sports options, but there also will be available a range of educational, shopping, work-at-home, energy management, and other services that will change the way we live our lives.

By the end of this decade, many Americans could have four or more providers of multi-channel video services and two or more telephone providers. Thus, we will not only see a huge increase in the number and variety of services, but also an order of magnitude increase in the number of companies that offer them.

Second, consumers will have more control over their television service. The electronics and service platform we and others are developing will empower consumers to personalize their service and use tomorrow's television as a device to make their lives easier. If we can win cooperation from the programmers, we will have systems which allow consumers to take and pay for only those services they want when they want them.

The third element of our strategic vision is consumer convenience. With the complexity of our evolving networks and the plethora of choices they will offer, our customers must have onscreen guides and gateway devices that help them travel the information superhighway.

I believe, Mr. Chairman, that neither you nor your Subcommittee will argue about the merits of building our nation's Infostructure. I also believe that what I have said above and the more traditional competition policy analysis that follows later in my testimony will convince objective observers that the combination of TCI and Bell Atlantic, assuming the divestiture of in-region cable assets, should not raise any significant antitrust concerns.

You certainly have heard your share of anecdotes from previous witnesses, all of which have been discussed at length here and in the other body when Congress debated and passed the Cable Act of 1992 over the President's veto. The Congress designed many, complex provisions in the 1992 Act to deal with these situations and others like them involving other companies.

Many of those Cable Act provisions are just now taking effect. Others will take effect soon in accordance with timetables established by Congress just last year. To suggest now that all these issues be revisited before the 1992 Act has even been fully implemented makes no sense at all.

Without getting into details, I can assure you that virtually all these anecdotes are either completely untrue or wildly inflated by business competitors who seek your help in gaining commercial advantage.

However, I do believe there is a basic issue of trust that you and your Subcommittee Members are pondering. I realize it is part of your job to gain some comfort with the motivations of those involved in major national enterprises as important as the Information Superhighway. I also realize that I have become a target for a wide range of business competitors and consumer lobbyists who are dissatisfied with the pace of change in our industry, the first believing it to be too fast and the second believing it to be too slow.

I regret that neither I nor my company can ever respond to this type of controversy in ways that Washington normally expects.

For myself, I will continue to resist the notion that I need to sacrifice my privacy in order to respond to public misrepresentations about my motivations. Becoming a "public figure" means unacceptable risks to the health, safety and privacy of my family, and I will continue to refuse most of the hundreds of requests for press interviews to "tell my side of the story."

With respect to TCI, we simply are not going to spend anywhere near the many millions spent by other companies on public relations, image advertising or government affairs. Instead, we know our customers prefer we spend scarce resources on our cable systems and new programming.

We do respect the role of government, we do our best to comply with its laws and regulations, and we willingly supply factual information to panels such as yours that are conducting legitimate inquiries.

Nor am I suggesting that every negative comment about TCI or me is a public relations or competitive ploy. We have been building a brand new industry where the rules are not well established. We make our share of mistakes, but when we do, we try to correct them and move on.

Moving now to the specific subject of these hearings, it has been apparent to informed observers for some time that the current structure of the telephone and cable industries is inadequate to finish construction of the nation's Infostructure before the end of this century. Once technological development reached a critical stage and once government identified the Information Superhighway as a critical national objective, the types of business combination that are now being announced almost weekly became inevitable.

The problem, simply put, is that no one cable or telephone company has the financial resources or combination of skills to do the job. It will cost at least $60 billion to give existing cable and telephone networks the capability of carrying broadband, two-way interactive video programming and to equip subscribers to participate in these networks. Moreover, the task requires a thorough knowledge of national network operations, computer applications and the video marketplace that few, if any, companies now have.

Thus, we believe mergers and joint ventures, like the proposed Bell Atlantic/TCI merger, should be approved with, where necessary, appropriate regulatory safeguards. In the case of our merger, Bell Atlantic's stated intention to divest itself of in-region TCI cable operations within its telephone service area should be sufficient to meet any objective antitrust standard, as it was in the case of the USWest investment in Time Warner's cable operations.

II. TCI IN PERSPECTIVE

A. TCI and Size

Mr. Chairman, much of what I have discussed so far is of concern to all of the Members of Congress, and rightfully so. These developments in telecommunications may prove to be of unparalleled importance and they deserve your review and scrutiny.

I know the particular focus of this Subcommittee is the protection and promotion of competition for the benefit of consumers. That is what the antitrust laws, of course, are all about. Although I would prefer to focus on the dynamic challenges we are prepared to face, and the tremendous contributions to society and the economy that will come from meeting those challenges, I feel compelled to address at least in general some of the unprincipled and undeserved accusations that other witnesses before this Subcommittee have leveled at TCI and at me personally. Some of these accusations are the substance of pending litigation and I am limited in the way I can deal with them in this format. However, I believe it may be useful for the Subcommittee if I offer some general observations that will put some of these baseless charges into perspective.

If I relied solely on recent press stories to learn about TCI and the role that it plays in the entertainment and information industry, I would think that I was dealing with an entity combining the power of the pre-divestiture AT&T, IBM when it was the only name in computers, and the U.S. Postal Service before anyone ever heard of UPS or Federal Express. However effective these media images may be as political or competitive propaganda, they are simply not accurate, and indeed are dangerous distortions of the truth.

First, let's get the table set correctly. TCI is a large company, but we are certainly not a giant, whether compared to other telecommunications and technology firms or American companies as a whole. TCI's 1992 revenues (including Liberty) were a little over $3.7 billion. By comparison, AT&T and IBM each had 1992 revenues of over $65 billion; indeed, AT&T had higher profits ($3.8 billion) in 1992 than TCI's total revenues. In the telecommunications area alone, TCI is dwarfed by, among others, all of the regional telephone operating companies (whose 1992 revenues ranged from $10 to 15 billion each); GTE, with 1992 revenues of $19.9 billion; Time Warner, with revenues of $13 billion; and MCI, with revenues of over $10 billion. Even combined with Bell Atlantic, the resulting company would be only 15 percent as large as a combined AT&T/McCaw.

Video programming is delivered to American consumers by a variety of mechanisms, including cable. Any proper measure of concentration would have to take account of all those alternatives, including over-the-air broadcasters, video cassette sales and rentals, MMDS, SMATV and (soon) DBS. But even ignoring all that, and looking just at cable, the business is unconcentrated in both absolute and relative terms. Chart 1 shows the relative concentration levels of various industries--again limiting video distribution to cable operators. Cable is clearly the least concentrated, significantly below the 1000 level that the federal antitrust agencies describe as the level below which markets are not concentrated. There are 13 cable operators who serve at least one million subscribers, but there are only six major movie studios and just four broadcast television networks.

In addition, TCI is hardly a dominant company by any conventual standards, even in this artificially small "market." As Chart 2 shows, TCI/Liberty serves only about 20 percent of U.S. cable subscribers.[1] By comparison, AT&T still enjoys more than 60 percent of long distance revenues, and Nintendo makes over 75 percent of video games system sales.

Moreover, cable activities alone are clearly not the appropriate measure of TCI's relative size, since many noncable firms compete directly with cable companies, including TCI. At an absolute minimum, TCI's direct competitors include all firms that provide video programming to consumers, regardless of the method of delivery. This is readily apparent from the perspective of consumers; they purchase programming, not delivery

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[1]As Chart 2 shows, cable systems in which TCI or Liberty owns at least a majority of the outstanding stock serve 10.7 million basic subscribers. If those subscribers served by systems that are not majority owned but are managed by TCI are added, the total basic subscribers number increases to 11.2 million. The addition of basic subscribers served by all other cable systems in which TCI or Liberty have an investment interest, but does not manage, increases the total to 13.4 million.

mechanisms. The list of such competitors is already long--video rental stores, wireless cable, over-the-air broadcasters, SMATV operators and backyard dish dealers--and will grow longer in 1994 with the addition of a new delivery option (high power direct broadcast satellites) and new (and well-funded) industry participants--DirecTV (owned by Hughes, a General Motors subsidiary) and United States Satellite Broadcasting (owned by Hubbard Broadcasting, a radio and television pioneer).

When viewed in light of the approximately $200 billion in annual spending on entertainment (even excluding live entertainment), TCI's annual revenues are insignificant--less than 2 percent. Even looking just at video programming, Chart 3 shows that TCI's total revenues are less than half of that generated by video cassette and rentals alone--approximately $8 billion in 1992. Just adding video rental revenues (and ignoring video cassette sales and all other competing video distributors) to total cable revenues, TCI's supposedly "dominant" share would fall to 12 percent.[2]

This is simply not a dominant position by any traditional analysis. Of course, those with a political or competitive agenda, like Mr. Redstone in your earlier hearings, recognize this reality and frequently try to augment these modest numbers

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[2]Chart 3 shows two calculations: TCI's basic and pay cable revenues as a percent of total basic cable, pay cable and video cassette rental revenues; and TCI's total revenues as a percent of all cable subscriber revenues and video cassette rental revenues. In both cases, TCI's "share" is essentially the same--11-12 percent. Of course, even this calculations is conservative, because it ignores all other video distributors and video cassette sales, which are obviously directly competitive alternatives and all other entertainment options.

by ignoring video sales and rentals and by attributing to TCI the subscribers served by other cable firms such as Comcast, Cox or Newhouse, which have occasionally joined with TCI in programming investments or other ventures. This aggregation, of course, is totally inappropriate, since neither TCI nor Liberty has any ownership interest in any of these companies nor any involvement in the operation or management of their cable systems. The plain facts are that TCI is simply the largest, but hardly the dominant, firm in an unconcentrated industry, and all the overblown rhetoric to the contrary is simply hot air.

Finally, I cannot emphasize too strongly how wrong it is for anyone to speak of TCI "controlling" its subscribers. TCI has no "control" over anyone. Only slightly over half of those who we offer cable services to actually buy those services--a figure comparable to the industry as a whole. Obviously, each of these potential subscribers has a large number of other suppliers vying for their entertainment dollars, and most have several different alternatives for the delivery of video programming, including various combinations of over-the-air broadcasters, video sales and rentals, wireless cable (MMDS), back-yard dishes, SMATV operators and, beginning in 1994, at least two high power DBS distributors. In the foreseeable future, many of these potential subscribers will have another choice--programming delivered over telephone wires. Given this extensive competition just for video programming, not to mention other entertainment alternatives, it makes as much sense to speak of TCI "controlling" its subscribers as it does to speak of the broadcast networks "controlling" the audience that dials in the local channel that carries their programming.

B. TCI and Programming

The myth of TCI "control" over cable programming is particularly annoying to me, both when advanced by those with a competitive ax to grind and even more so when accepted uncritically by policymakers. We are proud of the role we have played in creating and preserving important and useful programming. We have not supported so-called "adult" programming or programming that glorifies violence or antisocial behavior. Instead, we have invested in, or otherwise supported financially services like The Discovery Channel, The Learning Channel, Court TV, Black Entertainment Television, VISN/ACTS, and The Family Channel, in addition to the Turner services. We have been selective in our investments; we probably get as many as 20 programming proposals a month, and our focus in making program investments has been to provide attractive programming choices to our subscribers.

Indeed, the history of the cable industry has shown that cable operators, including TCI, often have been the investors or financiers of last resort for cable programmers. The founders of Black Entertainment Television (Robert Johnson)and The Discovery Channel (John Hendricks) both have described on numerous occasions the difficulties they encountered in obtaining funding for their infant, and financially struggling, services. After they had been repeatedly turned down by other investment sources, cable operators provided financing that ensured the continued survival of the services and made possible their present success. As a result, Bob Johnson has stated that, through its financial support of BET, the cable industry has "done more to create minority programming and diversity in television than all FCC regulations and broadcasting outreach programs combined."[3]

Such actions have contributed significantly to the present range and diversity of programming choices.[4] Before the development of the modern cable industry, consumers' viewing choices were limited to the three broadcast networks, PBS and a few independent broadcast stations. In just over twenty years, in addition to the growth of UHF independents, more than 70 satellite-delivered national programming services have developed, with numerous specialty channels devoted to children's programming, minority programming, the arts, and public affairs, and a growing number of regional news and sports services.

The financial contributions of cable operators like TCI were important forces leading to this explosion in consumer choice. The FCC recognized the benefits of integration in its 1990 analysis of the cable industry, where it concluded, based on an extensive record: "[t]his vertical integration has increased

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[3]See Media Ownership: Diversity and Concentration: Hearings before the Subcomm. on Communications of Comm. on Commerce, Science and Transportation, 101st Congress, 1st Session 211 (1989) (Statement of Robert L. Johnson).

[4]As Viacom noted in its comments to the FCC on implementing the Cable Act of 1992: "Multi-channel video distributors in general, and cable operators in particular, have been at the forefront of developing new program services. To preclude such cable operator participation could result in decreased diversity by foreclosing new program services." Comments of Viacom International Inc. in MM Docket No. 92-264 (Feb. 9, 1993) at 20.

both the quality and the quantity of programming services available to the viewing public." Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 F.C.C. Rcd. 4962, 5007 (1990). The FCC reaffirmed this conclusion this year:

> As Congress recognized, and the record in this proceeding confirms, there are significant benefits to cable subscribers which result from vertical integration. First, MSO investment in cable programming services has provided cable subscribers with a variety of high quality cable programming services. . .. Second, vertical integration between cable operators and programming services produces significant efficiencies in the distribution, marketing and purchase of programming. Third, vertical integration results in lower programming costs, which in turn results in lower subscriber fees and lower cable rates for subscribers. Fourth, vertical integration fosters investment in more innovative and riskier programming services. (Report and Order and Further Notice of Proposed Rulemaking in MM Dkt. No. 92-264, FCC 93-332 (July 23, 1993) at 72-73).

Notwithstanding these facts, we still hear the argument that TCI's investments in cable programmers--almost universally noncontrolling minority investments--in some way give TCI undue power over programmers or competing distributors. Of course, this argument has come most loudly from those competitors who have refused to invest in new programming and instead would simply like to free ride on the significant investments made by TCI and others. But no matter how loud or how often it is repeated, the argument just doesn't hold water.

The truth is that TCI's programming interests are modest in both absolute and relative terms and, in almost every case, consist of minority, noncontrolling investments. They have been driven by our belief that consumers buy programming, not distribution, and that to attract and keep cable subscribers, TCI must affirmatively work to improve the quality of the programming available. I return again to this critical point: we have only been able to convince barely more than half our potential customers--those whose homes our wires can reach--to purchase our service,[5] notwithstanding the amazing breadth and variety of programming that cable offers. But I have absolutely no doubt that, without this distinctive and valuable programming, we would have many fewer subscribers. Certainly cable delivers improved signal quality in many places, but its primary selling point is the unique array of programming options we are able to deliver.

That is what we mean when we say that we act as a "purchasing agent" for our subscribers. To the extent that we can provide programming that people want to watch, they will buy that programming from us. If we don't, they won't! It's as simple as that.

Not all of our investments have been successful. We were unable to rescue The Fashion Channel from bankruptcy. The services in which we have investments today range from successful to merely surviving. Nevertheless, we think it is critical that we keep trying to promote attractive programming. We believe our efforts to encourage and promote new programming serve not only our interest, but also the public interest, by promoting diversity and a broader range of public voices.

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[5]TCI's 1992 average penetration rate nationwide was 57.6% of homes passed.

Chart 4 lists all of the national video programming services in which TCI or Liberty has any interest.[6] You will note that TCI does not have a controlling interest in a single service, and that Liberty controls only two--Encore, a fledgling movie service which it started from scratch, and Home Shopping Network, in which it acquired a controlling interest earlier this year. In almost every other case, TCI's or Liberty's investment is less than 25 percent of the voting interests, and neither TCI nor Liberty manages or operates any of these minority-interest services. We believe in identifying talented people like John Hendricks and Bob Johnson, helping them achieve the financial ability to implement their unique vision, contributing what insights we can on the preferences of our subscribers, and then getting out of their way. Our reward is two-fold: we gain, along with the other shareholders, if the service is successful, and our cable product becomes more attractive to potential subscribers.

The notion that TCI controls the most popular services is especially silly. Chart 5 lists the 20 most popular cable programming services, and TCI/Liberty's interests in them. As the chart shows, <u>TCI/Liberty does not control a single one of the top 20 services</u>. In fact, the only top 20 service in which TCI has a greater than 25 percent interest is The Discovery Channel, for which TCI and other cable operators provided critical financing at a time when it appeared the service might have to

[6]The only other programming services in which either TCI or Liberty has any investment in are regional services, such as regional sports, or non-video services, such as X*Press.

cease operations. The only other top 20 services in which either TCI or Liberty has any investment at all are the Turner Broadcasting services (CNN, TNT and TBS), The Family Channel, and QVC (an interest that TCI and Liberty have committed to sell if QVC is successful in acquiring Paramount).

With Turner, TCI's investment again was made at a time when Turner was facing severe financial difficulties, triggered by the purchase of the MGM film library. Our objective was to preserve this highly popular cable programming, and thus make our services more attractive to consumers. I know people have short memories, and it's hard today to imagine Ted Turner in financial distress, but that is exactly what the situation was in the late 1980s. Because of these investments by TCI and other cable operators, CNN is the leading source of news in the world today. I'm proud that I had something to do with making this happen, and it is very frustrating to see this effort attacked as serving some hidden agenda. As Chart 5 makes clear, the notion that TCI "controls" the lion's share of popular cable programming and as you heard Mr. Redstone loudly proclaim in your earlier hearing, is flat wrong, and he knew it was wrong when he said it.

In fact, vertical integration is very common in American business and, as both Congress and the FCC have recognized in the cable business, can generate significant efficiencies. Indeed, vertical integration in this context can raise only two legitimate concerns: (1) the distributors who own programming interests will disfavor unaffiliated programming, thus discouraging new entry into programming; or (2) by preventing competing distributors from gaining access to the programming, vertically-integrated distributors will impede competition from other distributors. Neither of these concerns exists in the cable industry today.[7]

On the first point, the TCI/Liberty facts are clear: of the 15 most widely carried services on TCI/Liberty systems, ten--The Nashville Network, Nickelodeon, Lifetime, USA, ESPN, MTV, C-Span, The Weather Channel, Arts & Entertainment, and CNBC--are services in which TCI/Liberty has absolutely no ownership interest. In contrast, several services in which TCI/Liberty does have an ownership interest--The Learning Channel, Court TV and E! Entertainment--are carried by less than one-third of TCI/Liberty systems. Specific studies by Robert Crandall of Brookings and others have concluded that there is no evidence to support the claim that TCI has discriminated against programming services in which it has no ownership interest.[8]

Congress has already addressed these issues. The 1992 Cable Act now flatly prohibits such conduct. The program carriage rules adopted by the FCC prohibit cable operators from discriminating in the selection, term, or conditions of carriage

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[7]A third theoretical concern with vertical integration--the evasion of rate regulation--is unlikely to occur in the cable industry. It is not likely to be profitable for a cable operator to inflate prices paid to a programming supplier in which it holds only a minority interest, because most of the excessive payments would go to other owners, and the operator would have to either absorb the added cost or increase prices to its subscribers. Moreover, this concern could arise only in the case of programming services in regulated tiers; services that may be purchased a la carte are not rate regulated.

[8]Similar conclusions have been reached by other studies, which are listed in Chart 6.

or programming based on the affiliation or nonaffiliation of the suppliers. The FCC also established a 40 percent ceiling for the number of cable channels that could be occupied by affiliated programmers. TCI/Liberty systems are in full compliance with this rule, which the FCC has recognized as sufficient to ensure competitive opportunities for unaffiliated programmers.

Perhaps the best evidence this alleged favoritism simply doesn't exist is the boom in programming offerings in recent years. There has been a dramatic growth in the number of national cable video networks over the years, which have almost doubled from 1982, when there were 41 services, to 1992, when there were 78. Today, as indicated by Chart 7, there are a phenomenal number of proposed new services--ranging from the Cable Health Club to The Golf Channel to The Therapy Channel--being offered to cable operators. It is obvious that potential program network developers are not being discouraged by all this sky-is-falling rhetoric about vertical integration.

On the second point, the 1992 Cable Act also addressed this issue and now flatly prohibits refusals on the part of programmers owned by cable operators to provide programming services to other video programming distributors. Moreover, as noted, TCI has no wholly-owned programming services; even including Liberty, it has only a minority interest in all but 2 national services. Nor does it manage any national programming service, which raises the question of how it would possibly implement any discriminatory plan. Even assuming (contrary to fact) that TCI had an incentive to discriminate against other distributors that competed with TCI cable systems, the other owners of the programming service generally would not share that incentive. Thus, even if it had control, TCI would face conflicts with the other owners if it tried to discriminate. I note, just for the record, that Encore -- one of the 2 national programming services in which TCI/Liberty does hold a majority interest--last week announced an affiliation agreement with DirecTV, the new Hughes-owned DBS service, which will carry the full line of Encore services.

There is yet another issue relating to programming that I feel compelled to address, and that is the notion--again advanced forcefully, but falsely, by Mr. Redstone and others in your earlier hearings--that TCI is so large a buyer that it can determine whether a particular programming service will succeed or fail simply by its decision whether to carry the service. This is not only wrong, but obviously wrong. TCI reaches only 20 percent of cable subscribers.[9] All but the 16 largest cable services have fewer subscribers than would be available even assuming that their programming did not reach a single TCI/Liberty subscriber. Many apparently successful services reach less than one in three cable subscribers, or considerably less than half the non-TCI/Liberty cable universe. Does carriage by TCI help attract advertisers or increase subscriber revenues? Of course. Is it desirable from a programmer's point of view? Obviously, yes. Is it necessary to entry or success? No.

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[9]Even if you include all the subscribers of those cable systems, not owned or managed by TCI or Liberty, but in which they hold a minority investment, the number would only be 24 percent.

More importantly, a focus on the mere number of subscribers reached by various programming services is just too simplistic. What determines whether a cable programming service will survive and be successful is not just the number of subscribers it reaches, or how many systems it is carried on, but what its costs are and what revenues it can achieve from a combination of advertisers, distributors, and (in the case of pay services) subscribers. A low cost service obviously requires fewer subscribers and/or less advertising and distribution revenue than does a more expensive service. Talk shows and reality-based television are less expensive to produce than dramatic series, and that probably is one reason why more of the former have turned up on broadcast television as its share of television viewers has fallen. Obviously, if a programmer seeks to provide very expensive programming, more revenues are required to balance the books, but there is no reason why that programmer should not have to convince distributors that consumers want that programming--and are willing to pay for it.[10]

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[10]A good illustration of this point is sports programming. When ESPN sought to bid for NFL football rights, it first sought agreement from cable operators that they would be willing to pay a surcharge to cover the cost of acquiring that additional programming. Enough operators were willing to do so that ESPN was able to bid for and obtain the rights, but suppose that had not been the case. ESPN would still have been free to seek to acquire that programming, but is there any reason that a particular cable operator should have been required to pay additional fees to ESPN to cover its extra costs, assuming ESPN acquired the rights? The answer is clearly no, which is why ESPN offers a separate feed on Sunday nights during the football season to those systems that do not wish to pay the NFL surcharge. Those cable operators who agreed to pay higher fees believed that the addition of NFL games on Sunday night would make cable more attractive to consumers, and would help to (continued...)

One final point on programming: Mr. Redstone also has alleged that TCI is seeking to acquire an interest in one or more movie studios in order to control the subsequent distribution of that studio's films, thereby disadvantaging unaffiliated programmers that must have access to such films to program their services. This is another argument that falls apart when you look at the facts.

Neither TCI nor Liberty currently owns any production facilities or movie studios. TBS (in which TCI has a 24.8 percent equity position and a 12 percent voting interest) has interests in two small independent movie studios, New Line and Castle Rock. While Mr. Redstone would like you to believe that TCI controls these studios through its minority position in TBS, it just isn't true. TCI does have a commitment to directly acquire a minority interest in the independent producer Carolco, but this transaction has not yet been closed. Thus, TCI's actual control over movie studios at present is nonexistent.

Of course, even assuming (contrary to the facts) that TCI somehow did control all the output of New Line, Castle Rock and Carolco, these small studios represent less than 6 percent of all North American box office revenues in 1992. And even if TCI were to acquire 100 percent control of a major film studio (which I can tell you is not likely to happen), it would still not have a

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[10](...continued)
increase penetration and reduce churn. But surely we should have the right to make that judgment, and not be required to pay for the programmer's decision to raise its costs, regardless of whether we believe it benefits our subscribers. This is another illustration of how cable operators, if they want to be successful, must act as a purchasing agent for their subscribers.

significant market share in film production or any interest that raised any legitimate competitive concerns. Of course, such an acquisition might have one positive effect: it might repatriate ownership of uniquely American assets from foreign hands.

Mr. Redstone also complained about the loss of exclusive film rights to TCI/Liberty services. I might point out that it was the Viacom service Showtime that first began to acquire exclusive rights to film products, for the logical reason that exclusivity offered a way to competitively differentiate its much less successful movie service from that sold by HBO. Exclusivity and product differentiation is a perfectly legitimate competitive tool, as Viacom continues to recognize; just two weeks ago, Viacom signed a seven-year exclusive agreement with MGM. Let's be clear: When Mr. Redstone complains about TCI or Liberty outbidding Viacom for film rights, what Mr. Redstone is really complaining about is competition. He doesn't like the fact that he has to deal with a new and vigorous competitor. Of course, Showtime has had enough difficulty just competing with HBO; it's not hard to understand why Mr. Redstone would be nervous about any additional competition.

That competition is going to exist: the reason TCI/Liberty recently entered into contracts with Universal and Disney providing for exclusive pay cable distribution rights for some of their future films was to help create a new maxi-pay service, STARZ!, that will compete with HBO and Showtime and Disney and the other movie services. The film rights that TCI and Liberty have acquired from Universal and Disney were acquired in open bidding, are for limited periods and overlap only briefly (the Universal agreement expires in 1998 and most of the Disney product will not be available until 1997). Even during the brief period when the Universal and Disney deals coincide, TCI/Liberty's share of distribution rights will be substantially less, for example, than HBO's share has been in recent years.

These new contracts are for relatively limited terms and all parties will be free to compete for future rights once the contract expires. Obviously, Mr. Redstone's complaints are nothing more than sour grapes from a losing bidder. And as far as the allegation that Liberty paid a "predatorily" high price for the exclusive rights -- a price that could be justified only by the anticipated harm to its competitors -- this is a particularly silly complaint. If Liberty paid too high a price, the only party that will be injured is Liberty, because its cost of doing business will have increased compared to its competitors. This is a particularly good example of why competitor complaints are almost always about too much competition, not too little. If Mr. Redstone put as much energy into creating better products as he has historically put into litigating with his competitors, distributors and suppliers, his customers (and shareholders) would be better served..

C. TCI and The Antitrust Laws

Finally, I want to say a few words about TCI's approach to competition. TCI has been an aggressive competitor, in the best American tradition. TCI has been effectively controlled by a relatively small group of shareholders, and thus we have in a very real sense risked our own money to invest in infrastructure, programming and new technology. We have not paid high salaries, but have instead offered our employees--including our senior executives--a partnership, whereby they do well if the company prospers. TCI, in fact, has prospered, but it has done so by being smarter, working harder, and being willing to take more risks than our competitors.

Thus, it is frustrating to have our hard work and success denigrated by claims that we have acted unfairly or anticompetitively, and thus have not earned our success. We have earned every bit of it.

Mr. Redstone in his earlier appearance before this Subcommittee was quite vocal in accusing TCI of repeated violations of the antitrust laws. He will have the opportunity to put his facts where his mouth is in the private litigation he has filed against TCI and others. Because of the pendency of that litigation, I am limited in what I can say about the specific claims in his lawsuit, but I will say that we believe his lawsuit was filed primarily to gain an advantage in the battle for corporate control of Paramount, and secondarily to try to chill our competitive behavior. It did not succeed in the former objective, and it will not succeed in the latter, as I hope our actions since the litigation was begun have demonstrated. The litigation is baseless. We intend--vigorously and successfully--to defend ourselves against this abuse of the judicial process, and to seek any and all possible recompense from Mr. Redstone and his controlled companies for the costs we have incurred in doing so.

With respect to other antitrust issues that have generated some attention, the facts are as follows:

a. Jefferson City

The Jefferson City litigation, Central Tele-Communications, Inc. v. TCI Cablevision, Inc., 800 F.2d 711 (8th Cir. 1986), cert. denied, 439 U.S. 910 (1987), involved a private lawsuit filed in 1983, arising out of the renewal of TCI's franchise for Jefferson City, Missouri, when a single TCI employee, acting outside the scope of his employment, engaged in conduct neither authorized nor condoned by TCI. He was discharged once TCI learned of his unauthorized actions.

All of TCI's corporate actions in connection with that franchise renewal were a good faith attempt to deal with the appropriate government bodies and, when necessary, to seek judicial enforcement of TCI's rights to own and operate the cable system franchise. A subsequent and detailed review of TCI's corporate involvement led the FCC to conclude that the incident did not reflect adversely on TCI's corporate character or its ability to serve as an FCC license holder. See Tempo Satellite, Inc., 7 F.C.C. Rcd. 2728 (May 1, 1992). I should note that in 1988, Jefferson City renewed TCI's nonexclusive franchise for an additional eleven-year term and, in connection with the FCC proceeding I just referred to, TCI received an unsolicited letter of support from the Chairman of the Cable Quality Commission of Jefferson City, who described TCI as "one of our community's best